IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.303 OF 2006
WITH
CIVIL APPLICATION NO.388 OF 2006

M/s.Kwality Homes and ors. ..Appellants.

V/s.

Vijay Vasant Angane & Anr. ..Respondents.

Mr.R.D.Soni i/b M/s.Ram & Co. for appellants.

Ms.Jahagirdar for P.S.Dani for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 3, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record.

2. This appeal from order takes exception to the Judgment and order passed by the Civil Judge, Senior Division, Panvel dated 29th March, 2006 below Exh. 5 in S.C.Suit No.213 of 2005 refusing interim relief during the pendency of the suit. After hearing the counsel for the parties and going through the record in my opinion, no fault can be found with the conclusion reached by the Court below in rejecting prayer for interim relief. Amongst other, the reasons recorded by the lower Court in paragraph-13

of the impugned Judgment is unexceptionable. That is a possible view. The Court below has rightly accepted the affidavit of Jagdish Patil who was the mediator between the parties. Mr. Jagdish Patil filed affidavit before the lower Court dated 17th March, 2006 indicates the circumstances in which the plaintiffs were placed and were unable to give the balance amount and eventually the arrangement was reached that the defendants will be free to sell the property to the third party on condition that the sale consideration already paid by the plaintiffs will be returned to the plaintiffs in terms of clause 14 of the Memorandum of Understanding. It is in this backdrop, eventually, letter terminating the Memorandum of Understanding came to be issued by the defendants on 9th September, 2005. The Court below has recorded that no attempt was made by the plaintiffs to contradict the stand taken by said Jagdish Patil on affidavit. On this finding, lower Court accepted the version of Jagdish Patil, who was the mediator in the transaction. Thus, the view taken by the lower Court is a possible view. If that view is taken as it is, it necessarily follows that the fact of termination of MOU was done in consultation with the plaintiffs and to the knowledge of the plaintiffs. The plaintiffs allowed that

transaction to culminate in the Conveyance Deed executed by the defendants. Defendants also issued formal termination letter dated 9th September, 2005. The argument that this termination letter has come on record for the first time in the suit and was never served on the plaintiffs, cannot be the basis to grant interim relief as prayed. The parties will have to establish that fact before the lower Court. For the time being, suffice it to observe that the Memorandum of Understanding between the parties stood terminated by letter dated 9th September, 2005 and that the defendants have already created third party interest in the suit property by registered sale deed.

3. To get over this position, counsel for the appellant would contend that the termination notice refers only to one Survey No.1, Hissa No.11, whereas the agreement of sale of property consists the Survey No.1 Hissa No.11, 12, 13, 14, 16, Survey No.119 Hissa No.1 P. The argument seems to be attractive, however, clearly overlooks that letter dated 9th September, 2005 refers to the Memorandum of Understanding and clauses thereunder. The defendants are therefore, justified in contending that the action of termination was of the entire Memorandum of

Understanding. So long as that stand is not turned down on the basis of evidence which will be brought on record, it is not possible to discard the letter dated 9th September, 2005.

4. Counsel for the appellants then contends that the defendants did not respond to the public notice or to the legal notice given on behalf of the appellants. However, this submission has been rightly countered by the counsel for the defendants by pointing out that the public notice as well as legal notice referred to is in subsequent point of time, dated 19th October, 2005. If the agreement was already terminated under letter dated 9th September, 2005, there was no necessity for the defendants to respond to the public notice or legal notice sent by the plaintiffs. Taking overall view of the matter, it is not possible to overturn the conclusion reached by the trial Court at this stage, which is a possible view. Accordingly, this appeal should fail.

5. Counsel for the appellants also argued that the defendants were relying on the document which was unregistered document, which document ought to have been impounded and defendants cannot be permitted to rely thereon. Indeed, this aspect will have to be

considered by the trial Court. Suffice it to observe that the defendants are relying on the registered sale deed, which gives value of the suit property as Rs. One crore which value is not commensurate with the value agreed to be paid by the appellants in the Memorandum of Understanding. In the Memorandum of Understanding value is mentioned as Rs.2,02,51,000/-. If it is a case of under valuation it is open to the parties to proceed in accordance with law. However, this cannot be the basis to grant interim relief. Hence dismissed.

6. Counsel for the defendants in all fairness submits that defendants are not interested in retaining the amount received from the plaintiffs under the Memorandum of Understanding. He submits that so far defendants have received Rs. 95 Lakhs. Counsel for the defendants submits on instruction of defendants who is present in the court that Defendant is willing to deposit that amount in the trial Court. It will be open to the defendants to deposit the amount before the trial Court within one month from today. Plaintiffs are granted liberty to withdraw the same, if so advised. This arrangement will be without prejudice to the rights and contentions of the parties.

7. Appeal as well as civil application disposed of on the above terms.